

REMARKS

Claims 1-27 were previously pending. Claims 18-21 have been canceled without prejudice. No claims are currently added. Reconsideration of the pending claims in light of the above amendments and the following remarks is respectfully requested.

§ 102 Rejections

Claims 1-8, 11, 13-17, and 22-27 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application Publication No. 2005/0065611 to Huppert et al. (“Huppert”). The PTO provides in MPEP § 2131 that “[t]o anticipate a claim, the reference must teach every element of the claim....”

Therefore, to sustain the rejection of these claims Huppert must teach all of the claimed elements of each claim.

With respect to independent claim 1, however, Huppert at least fails to disclose “a first component having a first laterally-extending flange for engaging a first vertebra from a lateral approach, the first flange extending from a first bearing surface offset from a first center point of the first bearing surface, the first component having a first articular surface opposite the first bearing surface,” as required by claim 1. Rather, the winglet 2 of Huppert is fitted around pin 12 that is located centrally on the external surface 10 of the plate 111. Huppert also at least fails to disclose “a second component having a second laterally-extending flange for engaging a second vertebra from a lateral approach, the second flange extending from a second bearing surface offset from a second center point of the second bearing surface, the second component having a second articular surface opposite the second bearing surface for cooperating with the first articular surface to permit articulating motion between the first and second components,” for at least the same reasons. Thus, for at least these reasons Huppert fails to teach all of the claimed elements of independent claim 1 and claims 2-8, 11, and 13-17 that depend from and further limit claim 1.

Similarly, independent claim 27 requires that the keels of the first and second articular components be “offset from a central portion of the bearing surface.” Thus, for at least the same reasons Huppert fails to teach all of the claimed elements of independent claim 27.

Further, independent claim 23 similarly recites, “the flange extending substantially laterally along the first surface and offset from a center point of the first surface.” Thus, for at least the same reason Huppert fails to teach all of the claimed elements of independent claim 23.

With respect to independent claim 22, Huppert at least fails to disclose “the second flange being offset from the first flange upon the second bearing surface being substantially parallel to the first bearing surface during engagement of the second component with the first component,” as required by claim 22. The winglets 2 of Huppert are aligned, not offset, when the external surfaces 10, 10' are substantially parallel. Thus, for at least this reason Huppert fails to teach all of the claimed elements of claim 22.

Similarly, independent claim 24 recites “laterally inserting the second articular component into a second vertebra such that the second flange is offset with respect to the first flange and the surfaces of the first and second components are substantially parallel.” Thus, for at least the same reason Huppert fails to teach independent claim 24 and claims 25 and 26 that depend from and further limit claim 24.

Therefore, Applicants respectfully request that the Examiner withdraw the §102(e) rejections of claims 1-8, 11, 13-17, and 22-27.

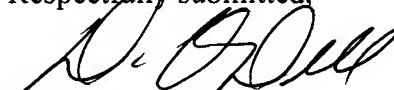
§ 103 Rejections

Claims 9, 10, and 12 were rejected under 35 U.S.C. §103(a) as being unpatentable over Huppert in view of U.S. Patent No. 6,899,735 to Coates et al. (“Coates”). However, as shown above Huppert fails to teach all of the elements of independent claim 1 from which claims 9, 10, and 12 depend from and further limit. Further, the current application and U.S. Patent No. 6,899,735 to Coates et al. were, at the time of the invention of the current application, under a common obligation of assignment. Thus, in accordance with 35 U.S.C. §103(c)(1) Coates cannot preclude patentability of the current application. Therefore, for at least these reasons Applicants respectfully request that the Examiner withdraw the §103(a) rejection of claims 9, 10, and 12.

CONCLUSION

As a result of the foregoing, it is respectfully asserted that all pending claims are in condition for allowance. Should the Examiner deem that any further amendment is necessary to place this application in condition for allowance, the Examiner is invited to contact the undersigned at the below listed telephone number.

Respectfully submitted,



David M. O'Dell
Registration No. 42,044

Dated: October 30, 2006
HAYNES AND BOONE, LLP
901 Main Street, Suite 3100
Dallas, Texas 75202-3789
Telephone: 972-739-8635
IP Facsimile No. 214-200-0853

Certificate of Service

I hereby certify that this correspondence is being filed with the U.S. Patent and Trademark Office via EFS-Web on October 30, 2006.

